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9 CITY OF SANTA ANA

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 SOUTHERN DIVISION  
13

14 MICAH'S WAY, a California non-profit  
15 organization,

16 Plaintiff,

17 v.

18 CITY OF SANTA ANA, a municipal  
19 corporation,

20 Defendant.  
21  
22  
23  
24  
25

Case No.: 8:23-cv-00183-DOC-KES

**DEFENDANT CITY OF SANTA  
ANA'S NOTICE OF MOTION AND  
MOTION TO DISMISS  
PLAINTIFF MICAH'S WAY'S  
COMPLAINT; MEMORANDUM  
OF POINTS AND AUTHORITIES**

DATE: May 1, 2023

TIME: 8:30 a.m.

COURTROOM: 10-A

JUDGE: The Hon. David O. Carter

26 TO PLAINTIFF, ITS COUNSEL OF RECORD, AND THIS  
27 HONORABLE COURT:  
28

1       **PLEASE TAKE NOTICE** that on May 1, 2023, at 8:30 a.m., in Courtroom 10A  
 2 of the United States District Court for the Central District of California, Southern  
 3 Division, located at 411 West Fourth Street, Santa Ana, California 92701, Defendant  
 4 CITY OF SANTA ANA’S (“City” or “Defendant”) Motion to Dismiss Plaintiff  
 5 MICAH’S WAY’S (“Plaintiff”) Complaint for Violation of (1) Religious Land Use  
 6 and Institutionalized Persons Act and (2) First Amendment of the United States  
 7 Constitution (“Complaint”) will be heard.

8       Defendant’s motion is brought on the following grounds:

- 9       1. Plaintiff’s First Cause of Action for Violation of Religious Land Use and  
 10 Institutionalized Persons Act of 2000 (“RLUIPA”) fails to state a claim for  
 11 which relief can be granted under Federal Rule of Civil Procedure 12(b)(6)  
 12 because Plaintiff’s use of its property, as alleged in the Complaint, does not  
 13 constitute a religious exercise under RLUIPA.
- 14       2. Plaintiff’s First Cause of Action fails to state a claim for which relief can be  
 15 granted under Federal Rule of Civil Procedure 12(b)(6) because the City’s  
 16 denial of Plaintiff’s Certificate of Occupancy (“COO”) Application and the  
 17 City’s 2023 COO conditions do not impose a substantial burden on Plaintiff’s  
 18 religious exercise, as such exercise – incidental food distribution – is alleged  
 19 in the Complaint.
- 20       3. Plaintiff’s Second Cause of Action fails to state a claim for which relief can  
 21 be granted under Federal Rule of Civil Procedure 12(b)(6) because the City’s  
 22 zoning laws, as alleged in the Complaint, do not violate the First  
 23 Amendment’s Free Exercise Clause.

24       Defendant’s motion is based on the accompanying Memorandum of Points and  
 25 Authorities, on the full records of this matter, and upon such further briefing and  
 26 argument as the Court may allow at the hearing on this motion.  
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 28

1 This motion is made following a conference of counsel pursuant to Local Civil  
2 Rule 7-3, which took place on March 15, 2023.

3  
4 Respectfully submitted,

5  
6 SONIA R. CARVALHO  
7 City Attorney, City of Santa Ana  
8

9 Dated: March 22, 2023

10 By: /s/ Jose Montoya  
11 JOSE MONTOYA  
12 Assistant City Attorney  
13 JOHN M. FUNK  
14 Chief Assistant City Attorney  
15 Attorney for Defendant,  
16 CITY OF SANTA ANA  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

The Complaint filed by Plaintiff should be dismissed as it fails to state a cause of action upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). Plaintiff is a non-profit entity located at 1517 E. 4th Street in Santa Ana (the “Resource Center” or “Property”) operating within the City’s Professional (“P”) district, and is immediately adjacent to a residential neighborhood. Plaintiff has been the subject of multiple complaints from the neighboring Saddleback neighborhood residents because of its food distribution to individuals. When the City learned of the complaints, it issued an administrative citation to Plaintiff for conducting business operations without a valid Certificate of Occupancy (“COO”).

The Complaint stems from the City’s subsequent denial of Plaintiff’s COO application on grounds that Plaintiff was engaged in food distribution activities that are not permitted in the P district.

In August 2022, an internal appeal hearing was held before an administrative hearing officer who upheld the City’s decision on zoning grounds but returned the matter to the City for further evaluation of Plaintiff’s claim that the City’s land use decision violated RLUIPA. In its Complaint, Plaintiff has maintained that it distributes snack food and beverages inside its Resource Center but does so only as an ancillary service in connection with providing its “clients” (i.e. persons in need) with other primary services. Plaintiff characterizes this activity as religious exercise covered by RLUIPA. Plaintiff’s Complaint, however, lacks any factual support for its claim that the City’s denial of Plaintiff’s COO application imposed a substantial burden on Plaintiff’s religious exercise under RLUIPA, nor does the City’s zoning law in the P district violate the First Amendment.

1 II. STATEMENT OF RELEVANT FACTS AS ALLEGED IN THE  
 2 COMPLAINT

3 For purposes of this Motion to Dismiss, only the facts as alleged in the  
 4 Complaint which are relevant to this motion are recited below.

5 Plaintiff's Complaint alleges that a denial of its COO application and the  
 6 City's subsequent application of the 2023 COO Conditions (land use regulations)  
 7 deprives Plaintiff "its right to free exercise of religion, as secured by RLUIPA," by  
 8 placing a substantial burden on Plaintiff's religious exercise. Complaint  
 9 ("Compl."). ¶¶ 34, 109, 114, 118, 119, 121. Plaintiff also alleges violation of the  
 10 First Amendment's Free Exercise Clause pursuant to 42 U.S.C. § 1983. Compl. ¶¶  
 11 128-139.

12 Plaintiff alleges that it offers a variety of charitable services to the  
 13 impoverished, downtrodden, and disabled individuals in Santa Ana. Compl. ¶ 6.  
 14 Plaintiff alleges that the primary services that it offers to individuals in Santa Ana  
 15 in furtherance of its religious beliefs in rendering charitable services include "ID  
 16 vouchers; assistance in obtaining birth certificates; mail collection; hygiene  
 17 materials; clothing; bus passes; hotel/motel vouchers; tuition assistance for children  
 18 from poor families; counseling; delivery of food boxes to residences; referrals to  
 19 other outreach services; onsite assistance for persons released at night from the  
 20 Orange County jail, and many other programs and services." Compl. ¶¶ 6, 29.

21 Plaintiff alleges that when individuals visit its Resource Center "to obtain  
 22 one or more of the services [Plaintiff] offers, [Plaintiff] gladly provides them with  
 23 snack food items (muffins, pastries, fruit, etc.) and beverages (coffee, juice, water,  
 24 etc.)." Compl. ¶ 7. Plaintiff compares its food activity to a law office that offers its  
 25 "white-collar patrons" "coffee or lunch during meetings." Compl. ¶ 20.

26 Plaintiff further alleges that it "only hands out snack food and beverages  
 27  
 28



1 inside its Resource Center and does so in connection with providing its “clients”  
 2 (i.e. persons in need) with other primary services. Compl. ¶¶ 6, 29. Plaintiff states:  
 3 “Plaintiff is now extending the same hospitality to its clients that other businesses  
 4 in the Professional district customarily extend in offering refreshments to the  
 5 clients or customers who visit their offices.” Compl. ¶ 30.

6 Plaintiff alleges that in November 2021, the City began claiming that  
 7 Plaintiff’s act of charity in providing such food and beverage items to the poor and  
 8 homeless persons who visit Plaintiff’s Resource Center was not a “permitted use”  
 9 in the P district in which the Resource Center is located and thus constituted a  
 10 violation of the City’s Municipal Code. Compl. ¶ 8. At the same time in  
 11 November 2021, the City issued an Administrative Citation to Plaintiff and insisted  
 12 that, unless Plaintiff immediately obtained a COO to use and occupy its Resource  
 13 Center, Plaintiff would have to cease all operations at that location. Compl. ¶ 10.

14 In January 2023, Plaintiff’s initial COO application submitted in December  
 15 2022 was denied by the City on the grounds that Plaintiff’s operations were not  
 16 consistent with an office use nor the purpose of the General Plan designation and  
 17 zoning. Compl. ¶ 12. In February 2022, Plaintiff applied a second time for a COO  
 18 for its Resource Center and “earnestly sought to alleviate any concerns the City  
 19 might have about [Plaintiff’s] distribution of small amounts of food and beverages  
 20 to the people [Plaintiff] served.” Compl. ¶ 12. However, in June 2022, Plaintiff’s  
 21 COO Application was denied by the City on grounds that Plaintiff was engaged in  
 22 food distribution activity, which implies that the primary services offered by  
 23 Plaintiff were not a basis for denial. Compl. ¶ 8. Plaintiff alleges that it is the  
 24 City’s position that food distribution is a violation of the City’s zoning code and is  
 25 unpermitted in the Professional District. Compl. ¶¶ 79, 122.

26 Plaintiff exercised its right under the City’s Municipal Code to appeal the  
 27 City’s denial of Plaintiff’s COO Application and an appeal hearing was held in  
 28

1 August 2022. Compl. ¶ 14. After an almost three day hearing, Plaintiff alleges that  
 2 the administrative hearing officer, retired Superior Court Judge David R. Chaffee  
 3 (“Judge Chaffee”), granted Plaintiff’s appeal on the grounds that the City failed to  
 4 “address the RLUIPA issues.” Compl. ¶ 14.

5 As Plaintiff stated in its complaint, following Judge Chaffee’s decision, the  
 6 City Attorney’s Office met with Plaintiff to “negotiate a path forward in light of  
 7 RLUIPA and sought a resolution that would allow it to obtain a COO to use and  
 8 operate the Resource Center...” Compl. ¶¶ 27, 112. Plaintiff alleges that despite  
 9 Plaintiff’s representations that it now only hands out food and beverages inside its  
 10 Resource Center and in connection with other primary services, the City has  
 11 refused to alter its position and will not issue a COO unless Plaintiff agrees to  
 12 institute a total ban on providing any food or beverages at the Resource Center.  
 13 Compl. ¶¶ 29-31.

14 Plaintiff alleges that on January 11, 2023, the City notified Plaintiff via an  
 15 email from the City Attorney’s Office that the City would not issue a COO to the  
 16 Resource Center unless Plaintiff agreed to what Plaintiff refers to the “2023 COO  
 17 Conditions,” but fails to list what those conditions are in the Complaint. Compl. ¶  
 18 32. Plaintiff indicates that after further consideration by the City, the City’s  
 19 position remained unchanged that its denial of Micah’s Way COO application does  
 20 not impose a substantial burden on Micah’s Way’s religious exercise. Compl. ¶ 34.

### 21 22 23 III. LEGAL STANDARD FOR A MOTION TO DISMISS

24 Grounds for bringing a motion to dismiss include “failure to state a claim  
 25 upon which relief can be granted.” *Fed. R. Civ. P.* 12(b)(6) Dismissal is proper if  
 26 there is a “lack of cognizable legal theory” or the “absence of sufficient facts  
 27 alleged under a cognizable legal theory.” *Balistreri v. Pacific Police Dep’t*, 901  
 28

1 F.2d 696, 699 (9th Cir. 1988). While Plaintiff is entitled to have well pled  
 2 allegations taken as true, “a plaintiff’s obligation to provide the grounds of his  
 3 entitlement to relief requires more than labels and conclusions . . . .” *Bell Atl.*  
 4 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Finally, “. . . for a complaint to  
 5 survive a motion to dismiss, the non-conclusory factual content, and reasonable  
 6 inferences from that content, must be plausibly suggestive of a claim entitling  
 7 plaintiff to relief.” *Moss v. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The  
 8 facts alleged in Plaintiff’s Complaint are neither sufficient to support its claims nor  
 9 “plausibly suggestive” of any claim contained therein. As a result, this Court  
 10 should grant Defendant’s Motion to Dismiss.

11  
 12  
 13 IV. PLAINTIFF’S FIRST CAUSE OF ACTION FOR VIOLATION OF  
 14 RLUIPA FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE  
 15 GRANTED UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6)  
 16 BECAUSE PLAINTIFF’S USE OF THE PROPERTY AS ALLEGED  
 17 DOES NOT CONSTITUTE A RELIGIOUS EXERCISE UNDER RLUIPA

18  
 19 In passing the RLUIPA, Congress intended to relax the requirement under  
 20 First Amendment jurisprudence that the “religious exercise” be central to the  
 21 individual’s religion. Under RLUIPA, free exercise includes “any exercise of  
 22 religion, whether or not compelled by, or central to, a system of religious  
 23 belief.” 42 U.S.C. § 2000cc-5(7)(A). Particularly relevant here, RLUIPA  
 24 provides that “[t]he use, building, or conversion of real property for the purpose  
 25 of religious exercise shall be considered to be religious exercise of the person or  
 26 entity that uses or intends to use the property for that purpose.” 42 U.S.C. §  
 27 2000cc-5(7)(B); *see also Scottish Rite Cathedral Assn. of Los Angeles v. City of*  
 28

1 *Los Angeles*, 156 Cal.App.4th 108, 118 (2007).

2 In *Scottish Rite*, the court held that RLUIPA did not protect commercial  
 3 activities conducted by the Scottish Rite Cathedral Association of Los Angeles  
 4 (SRCALA) and its lessee, Los Angeles Scottish Rite Center, LLC (LASRC).  
 5 *Scottish Rite*, 156 Cal.App.4th at 119. In that case, the threshold question was  
 6 whether the cathedral was being used for the purpose of religious exercise when  
 7 used by LASRC, an entity to which SRCALA had rented the Premises. *Id.* at  
 8 118. The court held that a burden on a commercial enterprise used to fund a  
 9 religious organization does not constitute a substantial burden on religious  
 10 exercise within the meaning of RLUIPA. *Id.* at 67.

11 Similar to *Scottish Rite*, in the instant case, the threshold question is  
 12 whether the services provided by Plaintiff constitute a religious exercise. While  
 13 Plaintiff is not operating a commercial use, its use of its property as an  
 14 administrative office is analogous to commercial activity in the sense it is not  
 15 religious exercise. For example, Plaintiff alleges that it provides individuals in  
 16 Santa Ana with services such as “ID vouchers; assistance in obtaining birth  
 17 certificates; mail collection; hygiene materials; clothing; bus passes; hotel/motel  
 18 vouchers; tuition assistance for children from poor families; counseling;  
 19 delivery of food boxes to residences; referrals to other outreach services; onsite  
 20 assistance for persons released at night from the Orange County jail, and many  
 21 other programs and services.” Compl. ¶ 6. Plaintiff further alleges that when  
 22 individuals visit its Resource Center “to obtain one or more of the services  
 23 [Plaintiff] offers, [Plaintiff] gladly provides them with snack food items  
 24 (muffins, pastries, fruit, etc.) and beverages (coffee, juice, water, etc.). Compl. ¶  
 25 7.  
 26

27 Plaintiff alleges it is a non-profit, faith-based organization but the inquiry  
 28

1 does not stop there. As alleged, the services provided by Plaintiff are purely  
 2 administrative and are not religious in nature. For example, the services offered  
 3 by Plaintiff such as ID vouchers, assistance, counseling, mail collection and  
 4 “other programs services” are secular activities performed in a normal office  
 5 setting, which do not qualify as protected religious exercise under RLUIPA.  
 6 Additionally, the food activity at the Property is not a service that is offered by  
 7 Plaintiff but as discussed below, is merely an incidental use of minor  
 8 significance. *See Mintz v. Roman Catholic Bishop*, 424 F.Supp.2d 309, 318 (D.  
 9 Mass. 2006) (finding that buildings used by religious organizations for secular  
 10 activities are not automatically protected); *see also Scottish Rite*, 156  
 11 Cal.App.4th at 119 (discussing the Senate’s consideration of RLUIPA noting  
 12 that, despite the broad definition of “religious exercise” as the “use, building, or  
 13 conversion” of real property for religious exercise, “ ‘not every activity carried  
 14 out by a religious entity or individual constitutes “religious exercise.” In many  
 15 cases, real property is used by religious institutions for purposes that are  
 16 comparable to those carried out by other institutions.) Based on the foregoing,  
 17 the services offered by Plaintiff and use of its property, as alleged in the  
 18 Complaint, simply do not constitute religious exercise for purposes of RLUIPA.

20  
 21 V. PLAINTIFF’S FIRST CAUSE OF ACTION FAILS TO STATE A  
 22 CLAIM UPON WHICH RELIEF CAN BE GRANTED UNDER  
 23 FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6) BECAUSE THE  
 24 CITY’S DENIAL OF PLAINTIFF’S CERTIFICATE OF OCCUPANCY  
 25 AND 2023 COO CONDTIONS APPLICATION DOES NOT  
 26 SUBSTANTIALLY BURDEN PLAINTIFF’S RELIGIOUS EXERCISE

27 Even if Plaintiff’s use of its property as described in the Complaint is  
 28 construed as religious exercise, Plaintiff’s claims that the City has “deprived and  
 continue to deprive [Plaintiff] of its right to free exercise of religion, as secured

1 by RLUIPA, by imposing and implementing land use regulations that place a  
 2 substantial burden on [Plaintiff's] religious exercise" must fail. Compl. ¶ 118.  
 3 Before Plaintiff may take advantage of RLUIPA, it must prove that the land use  
 4 law applied to them constitutes a "substantial burden" on its religiously  
 5 motivated conduct. 42 U.S.C. § 2000cc-2(b). No set of facts in the Complaint  
 6 make it possible for Plaintiff to carry its burden.

7 A substantial burden is one that is "oppressive to a significantly great  
 8 extent" or that puts "substantial pressure" "to modify ... behavior and to violate  
 9 ... beliefs." *Guru Nanak Sikh Soc'y of Yuba City v. Cnty. of Sutter*, 456 F.3d  
 10 978, 988 (9th Cir. 2006). Although RLUIPA does not define "substantial  
 11 burden," the Ninth Circuit has consistently found that a substantial burden "must  
 12 place more than inconvenience on religious exercise. *New Harvest Christian*  
 13 *Fellowship v. City of Salinas*, 29 F.4th 596, 602 (9th Cir. 2022); *Int'l Church of*  
 14 *Foursquare Gospel*, 673 F.3d at 1068 (citing *Guru Nanak*, 456 F.3d at 988).  
 15 "Thus, for a land use regulation to impose a "substantial burden," it must be  
 16 "oppressive" to a "significantly great" extent. That is, a "substantial burden" on  
 17 "religious exercise" must impose a significantly great restriction or onus upon  
 18 such exercise." *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024,  
 19 1034 (9th Cir. 2004) (citations omitted).

21 The Ninth Circuit has considered certain factors to determine the  
 22 existence of a substantial burden, which "include, but are not necessarily limited  
 23 to, [1] whether the government's reasons for denying an application were  
 24 arbitrary, such that they could easily apply to future applications by the religious  
 25 group; [2] whether the religious group has ready alternatives available to it or  
 26 whether the alternatives would entail substantial uncertainty, delay, or expense;  
 27 and [3] whether the religious group was precluded from using other sites in the  
 28 city. See *San Jose Christian Coll.*, 360 F.3d at 1035-36; *Guru Nanak*, 456 F.3d

1 at 989; *Foursquare Gospel*, 673 F.3d at 1067, 1070; *New Harvest Christian*  
 2 *Fellowship*, 29 F.4th at 602.

3 Plaintiffs fail to meet any of the factors that the Ninth Circuit uses to  
 4 determine the existence of a substantial burden because the City’s decision was  
 5 not arbitrary, Plaintiff’s mere inconvenience would not amount to substantial  
 6 uncertainty, delay, or expense, and Plaintiff is not precluded from other sites in  
 7 the City, nor is the City requiring Plaintiff to abandon its current cite.

8 But most important – the food distribution, as described in the Complaint  
 9 – is nothing more than incidental and certainly not a primary use such that any  
 10 restriction on it would impose a substantial burden. Plaintiff alleges that it  
 11 offers a variety of charitable services to the impoverished, downtrodden, and  
 12 disabled individuals in Santa Ana. Compl. ¶ 6. Food bank and food pantry are  
 13 not listed as a service that is provided by Plaintiff. As it relates to food  
 14 distribution, Plaintiff’s allegations focus only on limited food distribution  
 15 occurring at the Property that is merely incidental and secondary to the primary  
 16 services they offer. Plaintiff alleges that when individuals visit its Property “to  
 17 obtain one or more of the services [Plaintiff] offers, [Plaintiff] gladly provides  
 18 them with snack food items (muffins, pastries, fruit, etc.) and beverages (coffee,  
 19 juice, water, etc.).” Compl. ¶ 7. As further support for incidental food  
 20 distribution, Plaintiff compares its food activity to a law office that offers its  
 21 “white-collar patrons” “coffee or lunch during meetings.” Compl. ¶ 20.  
 22 Plaintiff further alleges that it “only hands out snack food and beverages inside  
 23 its Resource Center and does so in connection with providing its “clients” (i.e.  
 24 persons in need) with other primary services. Compl. ¶¶ 6, 29. Plaintiff states:  
 25 “Plaintiff is now extending the same hospitality to its clients that other  
 26 businesses in the Professional district customarily extend in offering  
 27 refreshments to the clients or customers who visit their offices.” Compl. ¶ 30.  
 28



1 Under all these circumstances, as alleged, Plaintiff's food distribution is clearly  
2 incidental or ancillary to the primary services it provides. Based on Plaintiff's  
3 own allegations, it is inescapable that simply providing small snack food items  
4 such as a "cup of coffee and a muffin" to individuals that obtain other services  
5 at the Property is a minor activity when compared to the long list of services  
6 they offer. Accordingly, any curtailment or limitation on such a minor activity  
7 is a mere inconvenience and cannot possibly be a "substantial burden" as  
8 contemplated by the Ninth Circuit.

9 Prohibiting Plaintiff from distributing food is not excessively burdensome  
10 and does not pressure Plaintiff to modify its behavior to violation its religious  
11 belief. Compl. ¶¶ 119, 123. As discussed above, Plaintiff's food activity is  
12 incidental to its primary use of providing services to the underserved. By  
13 Plaintiff's own admission, the City has never asked Plaintiff to move from its  
14 location. Compl. ¶ 106. Further, the City did not act arbitrarily when it was  
15 willing to issue Plaintiff a COO if it ceases its food activity, which is not even a  
16 primary use of the Property as explained above. Compl. ¶¶ 119-120, 122.  
17 Plaintiff presents no facts nor allegations that the City has permitted food  
18 distribution for other religious and non-religious entities. Therefore, there is no  
19 substantial burden on Plaintiff's exercise of religion by restricting Plaintiff's  
20 admittedly small amount of food and beverages at the Property, an ancillary use.

21 ///

22 ///

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VI. PLAINTIFF'S SECOND CAUSE OF ACTION FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED BECAUSE THE CITY'S ZONING LAWS DO NOT VIOLATE THE FIRST AMENDMENT FREE EXERCISE CLAUSE

The Supreme Court and the Ninth Circuit and other federal courts have consistently found that RLUIPA is more protective of religious practice than the First Amendment. *Mayweathers v. Newland*, 314 F.3d 1062, 1070 (9th Cir. 2002); *Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 F.App'x. 726, 728, n. 2. (9th Cir. 2016); *Ramirez v. Collier*, 142 S. Ct. 1264, 1277 (2022) (citing *Holt v. Hobbs*, 574 U.S. 352, 357, 135 S. Ct. 853, 860 (2015)). In *Scottish Rite*, the court stated that in light of its determination that SRCALA's (the entity claiming religious exercise) right of religious exercise under RLUIPA was not burdened by the city's revocation of its COO, it did not need to analyze the constitutional claim of whether the COO revocation violated SRCALA's First Amendment right of free exercise. *Scottish Rite*, 156 Cal.App.4th at 121. Accordingly, if Plaintiff has not alleged facts to support a substantial burden for purposes of RLUIPA (which it has not), this means that Plaintiff has not alleged facts to support a First Amendment claim either.

As alleged and urged above, Plaintiff has not stated allegations, even if taken as true, that would constitute a violation of RLUIPA, and therefore its First Amendment claim must fail as well. If this Court should find otherwise, Plaintiff's claim under the First Amendment should still be independently dismissed for failure to state a claim.

"The First Amendment, which has been made applicable to the States by incorporation into the Fourteenth Amendment, provides that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ....' " *Employment Div., Oregon Dep't of Human Resources v.*

1 *Smith*, 494 U.S. 872, 876–77 (1990) (superseded by statute as stated in *Ramirez*  
 2 *v. Collier*, 142 S. Ct. 1264, 1281 (2022)) (holding that a Texas prison policy  
 3 preventing a death row inmate’s pastor from touching and audibly praying with  
 4 inmate during execution likely violated RLUIPA); *San Jose Christian Coll.*, 360  
 5 F.3d at 1030.

6 In *San Jose Christian College*, the Ninth Circuit found that the incidental  
 7 burden upon a college’s free exercise of religion is not violative of the First  
 8 Amendment where the record reflects that the city’s zoning ordinance applies  
 9 throughout the entire city and there is no evidence to hint that the college was  
 10 targeted on the basis of religion. *San Jose Christian Coll.*, 360 F.3d at 1031-32.

11 The same conclusion applies here. As noted by the Ninth Circuit, “[a]  
 12 law is one of neutrality and general applicability if it does not aim to ‘infringe  
 13 upon or restrict practices because of their religious motivation,’ and if it does  
 14 not ‘in a selective manner impose burdens only on conduct motivated by  
 15 religious belief.’” *San Jose Christian Coll.*, 360 F.3d at 1031. In the instant  
 16 case, the Plaintiff’s Property is zoned as “Professional.” This is not disputed by  
 17 Plaintiff. Compl. ¶ 30. Plaintiff alleges that it is the City’s position that food  
 18 distribution is a violation of the City’s zoning code and is unpermitted in the  
 19 Professional District. Compl. ¶¶ 79, 122. The City’s zoning code is neutral, has  
 20 general applicability and does “not aim to infringe upon or restrict’ the religious  
 21 practices of Plaintiff. *Church of Lukumi Babalu Aye v. City of Hialeah* 508 U.S.  
 22 533, 543 (1993); *San Jose Christian Coll.*, 360 F.3d at 1031. Plaintiff has  
 23 failed to allege any facts that the City’s prohibition on food distribution is being  
 24 applied in a selective matter. As Plaintiff stated in its Complaint, the City  
 25 Attorney’s Office even met with Plaintiff to “negotiate a path forward in light of  
 26 RLUIPA and sought a resolution that would allow it to obtain a COO to use and  
 27 operate the Resource Center...” Compl. ¶ 112.)  
 28

Plaintiff's allegations state that the City maintained that Plaintiff was "violating the City's Zoning Code by allegedly engaging in unpermitted food distribution in the Professional District" and would be willing to issue the COO for [Plaintiff's] Resources Center if Plaintiff ceased its food distribution activity. Compl. ¶¶ 79, 122. Again, Plaintiff presents no facts nor allegations that the City has permitted food distribution for other religious and non-religious entities. As discussed above, all food distribution activity is prohibited for all organizations and entities regardless of commercial or religious status in the City's Professional district. Therefore, the incidental burden on Plaintiff's free exercise of religion, if any, is not violative of the First Amendment's Free Exercise Clause.

## VII. CONCLUSION

Based upon the foregoing, this Court should grant Defendant's motion to dismiss Plaintiff's Complaint.

Respectfully submitted,

SONIA R. CARVALHO  
City Attorney, City of Santa Ana

Dated: March 22, 2023

By: /s/ Jose Montoya  
JOSE MONTOYA  
Assistant City Attorney  
JOHN M. FUNK  
Chief Assistant City Attorney  
Attorney for Defendant,  
CITY OF SANTA ANA

**PROOF OF SERVICE**

*Micah's Way. v. City of Santa Ana*  
*USDC Case No.: 8:23-cv-00183-DOC-KES*

I am employed in the aforesaid county; I am over the age of eighteen and not a party to the within action; my business address is 20 Civic Center Plaza, M-29, P.O. Box 1988, Santa Ana, California 92702.

On March 22, 2023, I served the foregoing document described as: **DEFENDANT CITY OF SANTA ANA'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF MICAH'S WAY'S COMPLAINT**, in this action by electronic mail to the following:

**SEE ATTACHED SERVICE LIST**

☐ (MAIL) I am readily familiar with my employer's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (FACSIMILE) The document was transmitted by facsimile transmission and was reported as complete and without error.

☐ (E-MAIL) I caused the documents to be sent to the person(s) at the electronic service address listed below, wherein such email is transmitted that same day in the ordinary course of business.

☒ (ELECTRONIC FILING) I provided the document(s) listed above electronically through the CM/ECF system pursuant to the instructions set forth in the Local Rules for the United States District Court for the Central District of California.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 22, 2023, at Santa Ana, California.

/s/ Suzanne St. Clair  
Suzanne St. Clair

**SERVICE LIST**

*Micah's Way v. City of Santa Ana, et al.*  
 USDC Case No.: 8:23-cv-00183-DOC-KES

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